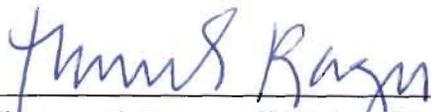




MEMORANDUM

To: Division Directors, Department and Program Managers
Executive and Legislative Branches

From: 
Thomas E. Ranger, Division Director
Division of Human Resources

Date: October 21, 2013

Subject: **Equivalency Clause Prohibition and Current Positions**

Per the Legal Advice from the Navajo Department of Justice [NDOJ] comes the following:

- Divisions, Departments and Programs will proceed as outlined below:
 - Current *existing* positions are not affected by the elimination of the Equivalency Clause – permanent or temporary; and
 - Continue with advertisement and hiring in *existing* positions that have an Equivalency Clause; and
 - Equivalency Clause will be eliminated on any new [never before classified] position; and
 - Continue to work with DPM/Classification Pay Office [CPO] on establishment of Minimum and Preferred Qualifications for each *existing* position; and
 - Eventually, DPM/CPO will collectively eliminate the Equivalency Clause through the 2-Page Personnel Classification Questioner's [PCQ] submitted by Divisions, Departments and Programs.

DPM/CPO will continue to move forward with the 2-Page PCQ during a transition period beginning October 1, 2013 and ending on December 21, 2013 to become compliant with the revised Personnel Policies Manual; however, this process should not delay the current flow of the Navajo Nation's Human Resource needs by Divisions, Departments and Programs within the Executive and Legislative Branches. We advise

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that Program Managers complete the 2-Page PCQ as soon as possible and return them to DPM. This transition period also should not interfere with the referral, hire and selection of any RIF [Reduction-In-Force] applicant.

Divisions, Departments and Programs within the Executive/Legislative Branches that have been approved a *waiver* by the Division of Human Resources may proceed to pick up applications from DPM and begin the Qualification Assessment, referral and hiring process. Those individuals trained in the past with the Equivalency Clause calculations will need to assist with Qualification Assessments that included the Equivalency Clause. DHR respectfully requests that Lead Persons are properly identified that are responsible for picking up applications and those names are on file with both the Division of Human Resources and the Department of Personnel Management.

If you have any questions, you may direct them to the Division of Human Resources office at extension 6375. Thank you.

ATTACHMENT: *Memos dated October 17, 2013*

cc: DHR Correspondence File



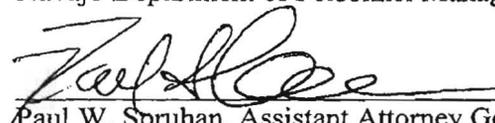
NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

HARRISON TSOSIE
Attorney General

DANA L. BOBROFF
Deputy Attorney General

MEMORANDUM

TO: Bernadette Bernally, Human Resources Director
Reycita Toddy, HR Classification & Pay Manager
Navajo Department of Personnel Management

FROM: 
Paul W. Spruhan, Assistant Attorney General
Labor and Employment Unit
Office of the Attorney General / NNDOJ

DATE: October 17, 2013

SUBJECT: **Equivalency Clause Prohibition and Effect on Current Positions**

I am memorializing the verbal advice of the Department of Justice on the effect of recent amendments to the Personnel Policies Manual approved by the Health, Education, and Human Services Committee by Resolution No. HEHSCMY-017-13 on May 13, 2013, with an implementation date of October 1, 2013. The amendments added the following language to the Manual:

The use of the equivalency clause is henceforth eliminated for job description/classification development by programs. Equivalency Clause is defined as automatically making a college degree (or degrees) the equivalent of a certain number of years of experience (and vice-versa). Henceforth, to establish job descriptions/classifications, programs must;

1. Establish minimum qualifications for a position (whether a certain number of years of experience, a specific educational requirement or both) required as a baseline for qualification assessments; and
2. Establish preferred qualifications for a position (whether a certain number of years of experience, a specific educational requirement or both) in seeking the best qualified candidate.

Memo to Bernadette Bernally and Reycita Toddy
RE: Equivalency Clause Prohibition and Effect on Current Positions
October 17, 2013
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While it is clear the Committee intended to prohibit the use of equivalency clause going forward from the effective date of the provision, the question presented is what the effect is on existing positions, whether regular status or temporary, and whether currently occupied or vacant.

The terms "henceforth," "development," and "establishment," refer to future acts, and suggest that the equivalency clause prohibition only applies to the creation of new positions. "Henceforth" by its plain language means from now on. As the resolution itself sets the implementation date as October 1, 2013, that means from October 1st forward. Both "development" and "establishment" suggest the creation of something new, which when combined with "job description/classification" or "job descriptions/classifications" suggest the creation of new positions. Interpreted this way, in the absence of other contrary language in the provision, it is the view of the Department of Justice that the provision does not affect existing positions. Their regular or temporary status is irrelevant. Therefore regular employees currently occupying those positions that may have been hired through an equivalency clause are unaffected, as well as temporary employees. Further, it also means that existing vacant positions are unaffected, and programs may move forward to advertise and hire applicants for those existing vacant positions with an equivalency clause. In the absence of clear language stating otherwise, DOJ believes this is not only consistent with the plain language of the provision, but will cause the least confusion for all programs involved in hiring.

As you know, I have suggested to Mr. Witherspoon of the HEHSC Committee that if the current language does not clearly reflect the intent of the Committee when eliminating the equivalency clause, the Committee can amend the language to clarify its intended effect. However, prior to that amendment being approved, DOJ believes the most prudent approach to minimize confusion and possible liability for the Nation is to leave all existing positions unaffected.

If you have any questions or concerns about this memorandum, please let me know at Extension 7976.

PS/cgt/459

Xc: Honorable Jonathan Hale, Chairman
Honorable Dwight Witherspoon, Member
Health, Education, and Human Services Committee

Harrison Tsosie
Dana Bobroff
Navajo Department of Justice

Memo to Bernadette Bernally and Reycita Toddy
RE: Equivalency Clause Prohibition and Effect on Current Positions
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Tom Ranger
Division Director
Division of Human Resources
Office of the President and Vice-President